**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| STEVEN R. YOURKE,<br><br>Plaintiff - Appellee,<br><br>v.<br><br>CITY AND COUNTY OF SAN FRANCISCO; MICHAEL HENNESSEY, Sheriff; ROBERT GALLOT, Sheriff,<br><br>Defendants - Appellants. | No. 06-16450<br><br>D.C. No. CV-03-03105-CRB<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted October 24, 2007[**]
San Francisco, California

Before: THOMAS, TALLMAN, and IKUTA, Circuit Judges.

The Defendants appeal from the district court's order denying a motion for qualified immunity. We dismiss the appeal for lack of appellate jurisdiction.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

A review of the record reveals that we lack jurisdiction over this appeal because the district court's order was not a final decision within the meaning of 28 U.S.C. § 1291.

In this case, both parties filed motions for summary judgment on the issue of qualified immunity. The district court did not issue a final merits decision on either motion. Rather, the district court denied both motions without prejudice and stayed further proceedings in the district court pending resolution by this Court of a parallel case, *Bull, et al., v. City and County of San Francisco, et al.*, No. 06-15566. The district court granted the parties leave to re-notice their motions once a decision in *Bull* is issued. It is clear from the record that the district court did not intend its order to be a final resolution on the merits of the parties' respective cross-motions for summary judgment. *See Swint v. Chambers County Comm'n*, 514 U.S. 35, 42 (1995) (holding that where a district court "planned to reconsider its ruling on the . . . summary judgment motion before the case went to the jury" the ruling was not a final decision because it was "'tentative, informal or incomplete'") (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). Rather, the district court intended simply to stay proceedings pending our

resolution of *Bull* and to afford the parties a new opportunity to brief the question of qualified immunity after *Bull* is decided.

Generally, an order staying proceedings is not appealable unless the order would impose an indefinite or lengthy stay that would put the parties "effectively out of court." *Blue Cross and Blue Shield of Alabama v. Unity Outpatient Surgery Center, Inc.*, 490 F.3d 718, 723 (9th Cir. 2007) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 10 (1983)). Such is not the case here.

Under these circumstances, the district court's decision was not a final order within the meaning of 28 U.S.C. § 1291, and we lack appellate jurisdiction over this interlocutory appeal.

**DISMISSED.**